

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 90381-001-SF

v

Blue Cross Blue Shield of Michigan  
Respondent

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Issued and entered  
this 18<sup>th</sup> day of August 2008  
by Ken Ross  
Commissioner

**ORDER**

**I**  
**PROCEDURAL BACKGROUND**

On June 13, 2008, XXXXX, on behalf of his minor daughter XXXXX (Petitioner), filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the material submitted and accepted the request on June 20, 2008.

Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on July 3, 2008.

**II**  
**FACTUAL BACKGROUND**

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan

(BCBSM) through XXXXX, a self-funded account. Coverage is governed by the language of BCBSM's *Professional Services Group Certificate* (the certificate).

The Petitioner, born June 29, 2004, has been diagnosed as autistic. She received applied behavior analysis (ABA) treatment at XXXXX Hospital from August 30, 2007 through October 26, 2007. The cost of this care was \$4,592.00.

Payment for the Petitioner's ABA treatment was denied by BCBSM as experimental and therefore not covered under the certificate. The Petitioner appealed. After a managerial-level conference, BCBSM did not change its decision and issued a final adverse determination dated April 11, 2008.

### **III ISSUE**

Did BCBSM properly deny coverage for the Petitioner's ABA treatment?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner's father says that BCBSM refuses to accept that his daughter's ABA treatment, which was recommended by her doctors, is eligible care for her autism. He argues that ABA is the most common treatment for autism and is not experimental. He believes that a long time ago ABA was experimental but over the years documented research has shown that it is effective treatment for autism. Therefore, he says ABA is no longer experimental and BCBSM is required to cover it.

The Petitioner provided a 2007 order from a case in federal court in Detroit where the judge found that ABA was not experimental for the treatment of autism and ordered BCBSM, as the administrator of a self-funded plan, to pay for the care. Based on that decision and other medical research about autism treatment, the Petitioner believes BCBSM should cover her ABA treatment.

### BCBSM's Argument

BCBSM indicated that it did not cover the Petitioner's ABA services because it considered them investigational. Experimental and investigational services are excluded in Section 3 of the certificate.

BCBSM defines autism as a developmental disorder of brain function classified as one of the pervasive developmental disorders. These disorders can vary widely in severity and symptoms; classical autism is characterized by impaired social function, problems with verbal and nonverbal communications and imagination, and unusual or severely limited activities and interests. BCBSM says ABA is considered a behavioral therapy that attempts to reduce disruptive behavior and improve communication skills and social adjustment.

BCBSM believes that the medical literature and clinical experience is inconclusive as to whether ABA is safe or effective for treatment for any condition. Additionally, the certificate indicates that a procedure is still considered experimental if it has been shown to be safe and effective treatment for some conditions but there is inadequate medical literature or clinical experience to support its use in the Petitioner's condition. BCBSM says it appears to be undisputed that ABA is safe but says doubts remain as to the effectiveness of the treatment for autism.

Therefore, BCBSM believes that the Petitioner's ABA therapy is not a covered benefit and it is not required to pay for it.

### Commissioner's Review

The question of whether ABA therapy is investigational or experimental for treatment of the Petitioner's condition was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer is board certified in pediatric neurology and has been in active practice for more than 10 years.

The IRO report said:

The MAXIMUS physician consultant explained that applied behavioral analysis is a psycho-educational intervention and is not a medical treatment.

The MAXIMUS physician consultant also explained that this intervention has not been proven to be effective in randomized clinical trials. The MAXIMUS physician consultant indicated that the evidence supporting applied behavioral analysis comes from articles involving a small number of children who were followed for several years. The MAXIMUS physician consultant also indicated that about half of these children improved with treatment and maintained that improvement over time. [Citations omitted] The MAXIMUS physician consultant noted that the original study of applied behavioral analysis was only quasi-randomized. [Citations omitted] The MAXIMUS physician consultant indicated that subsequent studies have not been as promising.

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that applied behavioral analysis services that the [Petitioner] received from 8/30/07 to 10/26/07 were experimental for treatment of her condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case. Therefore, the Commissioner accepts the IRO reviewer's conclusion and finds that ABA therapy is experimental for treatment of the Petitioner's condition and is not a covered benefit under the certificate.

## **V ORDER**

Respondent BCBSM's April 11, 2007, final adverse determination is upheld. BCBSM is not required to cover the Petitioner's ABA services because they are considered experimental for treatment of her condition and therefore excluded under the terms of the certificate.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review

should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.